

School Plan LB 198 Frequently Asked Questions

What is LB 198?

LB 198 took effect on March 19, 2024. Under LB 147 (2021), a member terminating all regular employment was limited to no more than 8 days of substitute and voluntary service per month during the 180-days following the termination of regular employment to stop contributions **or** take a distribution.

LB 198 defines different standards for members that are terminating regular service and continuing employment solely as a substitute or temporary employee and members terminating regular service and taking a distribution.

Among other things, LB 198 provides clarification for:

- Return-to-work guidelines for members who have terminated regular service, but **are not** applying for, or taking, a distribution, allowing for immediate and unlimited substitute and voluntary service, as well as temporary service, until a request for a distribution is submitted to NPERS,
- The start date for the 180-day separation period for members terminating regular service and applying for, or taking, a distribution, and
- The required documentation to determine eligibility based on immigration status.

This change allows a plan member to discontinue regular service in an NPERS eligible position immediately change their status to a substitute worker and not be limited by the eight day per month limitation imposed by LB 147.

TERMINATION OF EMPLOYMENT RULES FOR MEMBERS NOT APPLYING FOR, OR TAKING A DISTRIBUTION

1. Return-to-work guidelines for members who terminate regular service and do not request, or take, a distribution:

If terminating all regular service **and not requesting, or taking, a distribution** the member may immediately:

- Render unlimited work as a substitute and voluntary service, and
- Provide temporary service.

Be advised – these members are considered terminated for the following purposes:

- **The required minimum distribution (RMD) rules.**
 - Members must begin an annuity or take a distribution of their contributions plus interest before their RMD age deadline.
- The member's purchase of additional service credits.
- Eligibility to contribute to, and accrue service credit in, the retirement system.
 - If a member again becomes a regular employee at a School Plan employer they previously met eligibility at, they would immediately begin contributions.
 - If a member again becomes a regular employee at a School Plan employer they have never met eligibility at, they would begin contributions if they will be working at least 20 hours a week.

To ensure that there is documentation to support the termination of regular service, a Non-Contributing Form **must be submitted within 20 days of no contributions.

2. If a member is not applying for, or taking, a distribution from their retirement account, can they contribute to the School Plan as a substitute?

NO, if a member is terminating all regular service as an NPERS eligible employee and changing employment classifications to only work as a substitute or provide temporary service, **they are ineligible to participate in the Plan** and all contributions and service hours reported must stop.

It is important to classify the employee per statute and have documentation to support the change:

Substitute – Hired as a temporary employee to assume the duties of a regular employee that is temporarily absent.

Temporary – Hired for one year or less to complete a task. When the task is complete, employment is terminated.

3. If a member terminates regular employment, provides unlimited substitute service, and does not take a distribution right away, when does the 180-day separation period start?

The 180-day separation period would start once NPERS receives a valid application to take a distribution.

4. What temporary service is allowed after terminating all NPERS eligible regular service if the member is not taking a distribution?

Temporary service may begin immediately after the conclusion of the member's regular service but will need to comply with the statutory definition: hired for a period of time no longer than a year for a specific task, and when the task is complete, the employment is over. The employer must supply documentation to support the temporary position and establish the temporary service was not an extension of the previous NPERS eligible regular service.

5. What if a member quits their teaching position and changes their status to a substitute, but continues to perform service as an extra duty coach? Does the substitute service and service performed as an extra duty coach all count as NPERS eligible service?

Yes. If the member discontinues providing service as a teacher to change their status to substitute but does not discontinue their other NPERS eligible regular service as an extra duty coach, then all service performed (both work performed as a substitute and hours performed for the extra duty) are deemed NPERS eligible and must be reported. In this scenario, the member has not satisfied the separation rules and is still a regular employee for retirement plan purposes. A member **could not** take a distribution in this scenario.

TERMINATION OF EMPLOYMENT RULES FOR MEMBERS THAT ARE APPLYING FOR, OR TAKING A DISTRIBUTION

1. Termination of employment rules for members requesting, or taking, a distribution:

- A member may not take a distribution from retirement if the member prearranged a return to work with **any** School Plan employer.
- A member may not take a distribution from retirement unless the member terminates regular employment.

- A member may only provide limited substitute and/or voluntary service on an intermittent basis to **any** School Plan employer within the 180-day separation period beginning the **later of**:
 - The date the member experienced a bona fide termination **or**
 - The date NPERS receives the member’s distribution application/request (because applications can come in **after** someone experiences a bona fide termination).
- “Intermittent basis” and “day of service” is defined in statute:
 - “Intermittent basis” means no more than 8 days in a calendar month of voluntary and/or substitute service provided on a day-to-day basis (no prearrangement).
 - “Day of service” means any length of voluntary and/or substitute service provided during a single calendar day (whether that is 5 minutes or 8 hours of service).

2. May a member and School Plan employer agree to have the member return to train the member’s replacement if the member is terminating and taking a distribution?

NO. This is a prearranged return to work. Further, training a replacement is not substitute service. Substitute service is defined as temporarily filling in for a regular employee who is temporarily absent. In this case, the returning member is not filling in for anyone. This would only be allowed if they are rendering unpaid voluntary service to train their replacement.

3. May a member who is requesting, or taking, a distribution referee, officiate, or coach, if paid by a School Plan employer during 180-day separation period?

NO. Refereeing, officiating, and coaching are generally considered regular employment for retirement purposes (unless classified as true temporary service supported by documentation and processes). If these services are provided by the retiring member during the 180-day separation period, then the member has not incurred a bona fide separation of service. Additionally, a bona fide termination of service does not occur if the employer and member prearrange the member’s return to an NPERS eligible regular position, such as a referee, official, or coach before the member terminates even if the prearranged return time is outside the 180-day period.

4. May a member seek a determination that they have already fulfilled their 180-day separation period?

Yes, a member can request a determination be made to the Director within 45 days after the later of:

- The date the member experienced a bona fide separation or
- The date the member’s distribution application/request was received by NPERS.
- This means that if a member delays seeking a Director determination until after the 45-day period, they lose their right to seek the Director determination.

5. What happens if a member does not follow the termination of employment rules?

If NPERS determines a bona fide termination did not occur, NPERS is required by law to:

- a) Collect missed contributions from the member and the employer (with applicable interest),
- b) Have hours of service and compensation reported for the member by the employer, and
- c) Collect back any distributions made to the member (with applicable interest).

NEW GUIDELINES FOR DETERMINING ELIGIBILITY BASED ON CITIZENSHIP OR LAWFUL PRESENCE

1. How do employers determine eligibility based on immigration status?

LB 198 changed the document requirement to support eligibility based on immigration status. The plan employer must first review the immigration status of the employee. **Employees with a C33 status receiving a deferred action (DACA) are NOT ELIGIBLE to participate.**

Once the immigration status is confirmed, the employer must receive at least one of the following unexpired documents from the employee to demonstrate citizenship or lawful presence. Employers should retain a copy of the document and be able to produce this document/copy if requested by NPERS.

Employers must go back and review current employees to confirm eligibility. There will be employees that were ineligible previously, that are now eligible and must participate as of 3/19/24. Accepted documents to support citizenship or lawful presence are listed below:

- ✓ A state-issued driver's license.
- ✓ A state-issued identification card.
- ✓ A certified copy of a birth certificate or delayed birth certificate issued in any state, territory, or possession of the United States.
- ✓ A Consular Report of Birth Abroad issued by the United States Department of State.
- ✓ A United States passport.
- ✓ A foreign passport with a United States visa.
- ✓ A United States Certificate of Naturalization.
- ✓ A United States Certificate of Citizenship.
- ✓ A tribal certificate of Native American blood or similar document.
- ✓ A United States Citizenship and Immigration Services Employment Authorization Document, Form I-766.
- ✓ A United States Citizenship and Immigration Services Permanent Resident Card, Form I-551; or
- ✓ Any other document issued by the United States Department of Homeland Security, or the United States Citizenship and Immigration Services granting employment authorization in the United States and approved by the Public Employees Retirement Board.

2. Should I submit documentation to NPERS to confirm eligibility for employees lawfully present?

No, NPERS is not collecting these documents any longer. The employer will need to obtain one of the proofs from the documentation list from the employee and keep it on file. NPERS may request the document in the future to confirm compliance with the law, but it is the employer's responsibility to keep the document.

3. What if NPERS already reviewed an employee and they were not eligible before?

They may be eligible to participate now! The change in statute is effective 3/19/24 and requires new eligibility criteria. The employer must review all non-contributing employees to determine who is now eligible. If they meet eligibility under LB 198, contributions must start on 3/19/24.

4. How do I determine what employees I need to review?

The employer must define their process for how they are going to review their employees. The employer needs to ensure that all employees who have one of the documents listed to meet lawful presence eligibility is participating in the plan.